IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 14TH NOVEMBER 2006 / 23RD KARTHIKA 1928

MACA.No.2015 of 2005

OP(MV).247/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, TRIVANDRUM
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APPELLANT/APPLICANT:

M.PARAMESWARAN PILLAI, PRESENTLY
RESIDING AT T.C. 36/1081, KULANGARA MADOM,
ENCHACKAL, VALLAKKADAVU P.O. THIRUVANANTHAPURAM.

BY DR.P.S.KRISHNA PILLAI, ADVOCATE.
MR.H.VINOD, ADVOCATE.

RESPONDENTS/RESPONDENTS:
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1. G.SREEDHARAN NAIR, KRISHNA MANDIRAM,
   TC.16/918, JAGATHY WARD, THIRUVANANTHAPURAM.

2. B.PREMRAJ, KRISHNA MANDIRAM,
   T.C.16/918, -DO-. -DO-.

3. THE NEW INDIA ASSURANCE COMPANY LTD.,
   BRANCH, IIND FLOOR, K.N.MATHEW BUILDINGS,
   G.A.KOIL ROAD, THIRUVANANTHAPURAM.

   BY MR.PMM.NAJEEB KHAN, ADVOCATE, FOR R3.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 14/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. HEMA, J.

M.A.C.A. No.2015 OF 2005

Dated this the 14th day of November, 2006.

J U D G M E N T

This appeal arises from an order of dismissing a claim petition filed by the appellant under the Motor Vehicles Act.

2. According to the appellant, he was driving an autorickshaw bearing No. KL-01/B 5241 on 01.11.1994 between 9.30 a.m and 9.45 a.m while autorickshaw bearing No. KL-01/1432 allegedly driven by the second respondent and owned by the first respondent came in a rash and negligent manner from the opposite side and hit against the autorickshaw driven by the appellant. The appellant sustained injuries including fracture and he was taken to the hospital. He filed a claim petition claiming Rs.1 lakh from the respondents being the owner, driver and insurer of the vehicle.

3. To prove the claimant's case, PWs 1 to 5 were examined and Exhibits A1 to A9 were marked. On the side of the respondents, Exhibits B1 and B2 were marked. The Insurance Company took up a contention that the autorickshaw owned by the first respondent bearing No. KL-01/1432 is not involved in the accident and hence the

Insurance Company is not liable to make the payment. The respondents 1 and 2 admitted the accident, but denied the rashness and negligence on the side of the second respondent in driving the vehicle.

4. The O.P was originally dismissed by the Tribunal as per order dated 12.11.1998 and the petitioner took the matter in appeal before this Court in M.F.A No.397/1999 and vide judgment dated 22.06.2004, the appeal was allowed and the case was remanded to the Tribunal for fresh decision. Subsequent to the remand, a petition under Section 170 of the Motor Vehicles Act was filed by the third respondent-insurer and it was allowed, since the first and the second respondents failed to contest the matter.

5. Additional witnesses were also examined after the remand as PWs 3 to 5. Exhibits B1 and B2 were marked on the side of the respondents after the remand. On the basis of the evidence on record, the Tribunal found that the appellant failed to prove his case. It was found that there was substitution of an unidentified tempo van with an autorickshaw for obvious reasons and dismissed the claim petition. The said award is under challenge in this appeal.

6. Learned counsel appearing for the appellant strongly contended that the findings of the Tribunal are not sustainable in the

absence of any evidence to show that the First Information Statement was given by the appellant himself. It is also submitted that the appellant was not conscious at the time when he was taken to the hospital and hence somebody who had taken PW1 to the hospital would have given some wrong information. On going through the records, I find that this argument is unacceptable for the following reasons.

7. The case set up by the appellant before the Tribunal is that the accident occurred due to the rash and negligent driving of the vehicle No.KL-01/1432, which was driven by the second respondent from the opposite direction. It hit against the autorickshaw driven by PW1 in his case. But, such a case appears to be a subsequently-developed one at a belated stage. The certified copy of the First Information Statement was produced and marked on the side of the claimant himself as Ext. A1(a). First Information Report in this case was registered on the basis of First Information Statement allegedly given by PW1. As per the statement, a "tempo van" had hit the "autorickshaw" driven by PW1 and the cause of the accident was "hit by a tempo van". There is no case for the appellant-PW1 in Ext.A1(a) that any autorickshaw driven by the second respondent was involved in the accident at all.

8. PW1 admitted in evidence that Ext.A1(a) is a statement given by him to the police and it was signed by him. Having admitted the signature and also the fact that Ext.A1(a) is the statement given by PW1, he is bound by the statement contained in Ext.A1(a) but he has no proper explanation why it shall not be acted upon. There is no plausible explanation why PW1 had told the police at the first point of time that the accident occurred due to the rash and negligent driving of the driver of a tempo van. It is not explained why PW1 told the police that the vehicle involved in the accident is a tempo van and not an autorickshaw.

9. It is also to be noted that the incident happened on 01.11.1994 between 9.30a.m and 9.45a.m in a broad daylight. The appellant is a driver who will normally be conversant with the nature of the vehicle involved. The accident having occurred in the day light and the vehicle which allegedly came from the opposite side has caused the accident, in all probabilities, PW1 would have seen the vehicle involved in the accident. But, PW1 has given a statement to the police, that too, on the next day of the accident that the vehicle involved in this accident is a tempo van.

10. It is also relevant to note that to the doctor also PW1 gave the same statement that the vehicle involved is a tempo van. Learned

counsel appearing for the appellant submitted that PW1 was not conscious at the time when the statement was made. This argument cannot be accepted, since there is nothing in Ext.A2 wound certificate to show that the patient was unconscious. PW4 doctor who was examined on behalf of the appellant deposed that, if as a matter of fact the patient was unconscious, that fact would find a place in the wound certificate. Normally, such fact will be recorded in the wound certificate itself. It is also stated by PW4 that, if the patient was unconscious, the name of the bystander or the person who brought the injured to the hospital would also be recorded in the wound certificate.

11. In such circumstances, in the absence of noting that the patient was unconscious, it is only reasonable to infer that the patient was conscious. It is also relevant to note that, if as a matter of fact, PW1's case is true that he was unconscious, he should have taken steps to examine the doctor who was actually examined him after the incident. Even otherwise, even if PW1 was unconscious when he was hospitalized, the statement was recorded by the police only on the next day and at least then, he must have been conscious. But, even at that stage, his statement to the police was that the vehicle involved in the accident was a tempo van.

12. In the above circumstances, I hold that the evidence given by PW1 that the vehicle involved is the autorickshaw owned by the first respondent may only be a subsequent development made by him to get some compensation from the Insurance Company-third respondent. It is also relevant to note that though the first and second respondents contested the matter originally, after the remand, they failed to contest the matter, as observed by the Tribunal in the judgment.

Apart from all these, the evidence of PW5 is also relevant in this context. He deposed that there is absolutely no reason for the persons who recorded Exts.A1(a), A2 etc. to make a wrong statement in the said documents. If as a matter of fact, the autorickshaw allegedly driven by the second respondent is involved in the accident, there will be definitely some damage on the autorickshaw. But, no document is produced to show that the said autorickshaw was damaged on the date of accident. Taking all these facts into consideration, I find absolutely no reason to interfere with the order under challenge. I am satisfied that the appellant did not prove his case by satisfactory evidence. The claim petition was rightly dismissed.

This appeal is dismissed.

K. HEMA, JUDGE

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